

БЕ ЛА КНИ ГА

за состојбата со ГОВОР НА ОМРАЗА во Република Македонија

LIBRI I BARDHË MBI GJENDJEN
ME GJUHËN E URREJTJES
NË REPUBLIKËN E MAQEDONISË

WHITE PAPER ON THE SITUATION
WITH HATE SPEECH IN THE
REPUBLIC OF MACEDONIA

КОМИТЕТ ЗА ЧОВЕКОВИ
ПРАВА НА РЕПУБЛИКА
МАКЕДОНИЈА

WH ITE PAP ER

on the situation with hate speech
in the Republic of Macedonia

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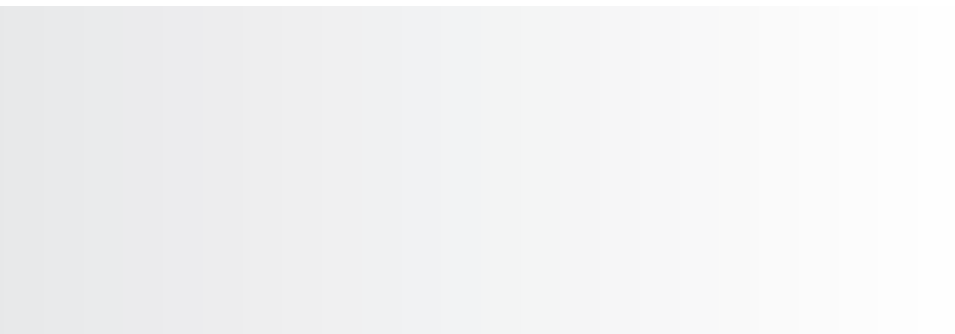
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INTRODUCTION

The Helsinki Committee of Human Rights of the Republic of Macedonia implemented the project **“Internet platform for mapping and monitoring hate speech in public spaces and the media”**. Some of the activities from this project that is to be implemented by the Helsinki Committee consist of monitoring, recording and reporting hate speech in the public space and the media in real time.

- Recording hate speech on a local and central level through volunteers on the www.govor-naomraza.mk platform
- A campaign promoting the platform and,
- Analysis and recommendations for prevention and combating hate speech

The white paper is a document containing general information, statistical data, as well as conclusions and recommendations on how to overcome the institutional problems with hate speech in the Republic of Macedonia in order to provide conditions for prevention and protection of victims against hate speech.

1. What is hate speech?

An expression which triggers hate towards one or several persons on grounds of their personal characteristics or affiliation to a certain group or community, constitutes hate speech.

2. Who can be a victim of hate speech?

Anyone could be a victim of hate speech, since hatred may occur as a result of several grounds: race, religion, language, ethnicity and ethnic origin, physical or mental disability, sexual orientation and/or gender identity.

3. How is hate speech manifested?

Apart from direct speech and on the Internet, hatred may be expressed by writing offensive symbols, graffiti, setting flags or religious symbols on fire, or by disseminating printed materials the content of which incites hatred on any grounds.

5. Where can we find hate speech?

Hate speech is present everywhere - on the television, on the radio, in the press, on Internet portals, cyberspace, social networks, political speeches and other public appearances, at public assemblies - rallies, protests, in the public space, on sports matches.

6. Hate speech crimes

What does inciting national, racial and religious hatred, discord and intolerance mean?

Inciting national, racial and religious hatred, discord and intolerance constitutes a criminal offense, and anyone who resorts to force, mistreatment, endangering the security, ridicule of national, ethnic or religious symbols, damaging other people's objects, desecrating monuments or graves or otherwise, instigates or incites national, racial or religious hatred, discord or intolerance, shall be punished in accordance with the law.

What does endangering the security due to the personal traits or a certain person's belonging to a certain group or community by means of information systems mean?

This manner of endangering the security constitutes a crime, according to which those who threaten to commit a crime which is punishable with imprisonment of five years or a more serious crime by means of information systems,

against a person due to their belonging to a certain sex, race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social background, religion or religious belief, other types of belief, education, political affiliation, personal or social standing, physical or mental disability, age, family or marital status, property, health, or on any other grounds stipulated by law, or by a ratified international agreement, shall be punished in accordance with the law.

What does spreading ideas of the superiority of one race over another, or propaganda of racial hatred or incitement of racial discrimination mean?

In its essence, discrimination is unequal treatment of an individual or group because of a particular trait. Discrimination is a crime and as such it is prohibited by the Criminal Code, which, among other provisions, stipulates that a person who spreads ideas about the superiority of one race over another or propagates racial hatred or instigates racial discrimination, shall be punished in accordance with the law.

What does spreading racist or xenophobic material by means of computer systems mean?

The described actions constitute a crime according to which those who, in public, spread racist and xenophobic written materials, pictures or other representations of an idea or theory that helps promote or incite hatred, discrimination or violence against any person or group on the grounds of race, color, national or ethnic origin, or religious belief, shall be punished with imprisonment from one to five years.

What does endorsement of or condoning a genocide, crimes against humanity or war crimes mean?

The described actions constitute a crime, according to which those who, through an information system, publicly deny, minimize, approve and condone genocide, crimes against

humanity or war crimes with the intention to incite hatred, discrimination or violence against a person or group of persons due to their national, ethnic or racial origin or religion, shall be punished in accordance with the law.

What does ridiculing the Macedonian people and the members of the other communities mean?

Ridiculing the Macedonian people and members of communities is a criminal offense, according to which the one who, with the intention to ridicule, shall publicly deride the Macedonian people and the communities that live in the country, will be punished in accordance with the law.

7. Mechanisms for protection against hate speech in the Republic of Macedonia

Ministry of Interior

The crime of hate speech may be reported to the Ministry of Interior.

Hate speech on social networks can be reported to the Electronic Crime Department under the Ministry of Interior.

Hate speech during sports matches may be reported to the police officers on duty during the match, or at the Ministry of Interior, and you may require them to take measures in accordance with the Law on Prevention of Violence and Indecent Behavior at Sports Matches.

Public Prosecution

In case of hate speech you may also press charges to the primary public prosecution which needs to investigate the case and decide whether to initiate criminal proceedings against the offender in question.

Commission for Protection against Discrimination

In cases of discriminatory, harassing or demeaning speech, which has the purpose or effect of violating the dignity of a person or creating

intimidating, hostile, humiliating or offensive environment, you may submit a complaint for protection against discrimination/harassment to the Commission for Protection against Discrimination. The complaint must be filed within 3 months as of the date of the violation or within one year as of the day of becoming aware of the act of discrimination.

The contact information, address and form for submission of the complaint to the Commission for Protection against Discrimination may be found on the following link: <http://www.kzd.mk/mk/kontakt>

Agency for Audio and Audiovisual Media Services

In cases of hate speech on the radio and television, you may submit a complaint to the Agency for Audio and Audiovisual Media Services, indicating the program on the specific media outlet, along with the date and period when the show was broadcasted. The Agency for Audio and Audiovisual Media Services i.e. the Agency's Head may take the following measures:

- adopt a decision to reprimand the media outlet;
- submit a request to initiate criminal proceedings in cases where, despite the reprimand, the media outlet continues committing the same violation that it received a reprimand for during the year;
- file criminal charges;
- submit a proposal to the Council to revoke the license, or adopt a decision for removal from the registry

Association of Journalists of Macedonia - Council of Honor

In cases of hate speech in the media by journalist who are members of the Association of Journalists of Macedonia, a complaint may be filed to the Council of Honor of the Association of Journalists. This Council lays down and defends

the principles of ethical, balanced and objective journalism which respects human rights yet fully complies with the freedom of the media outlet's editorial policy. Upon reviewing the complaint, in case the Council of Honor establishes violation of the principles and provisions of the Code of Journalists of Macedonia, it publicly reacts and condemns the said violation.

Council of Media Ethics of Macedonia (CMEM)

This Council functions as a non-governmental organization the work of which aims to promote self-regulation of the media by applying moral sanctions against those who do not comply with the professional standards and the Code of Journalists. There is an advisory body within the Council - the Complaints Commission - which reviews the complaints of the citizens, legal entities and other representatives of the public regarding the published media content, meditates between the persons who had sent the complaints and the editors, i.e. the media outlets which have aired the content that the complaints refers to, and adopts decisions on the complaints regarding possible violations to the Code;

8. Statistics

For the needs of the analysis and the white paper on hate speech in the Republic of Macedonia, the Committee submitted requests for information of public character to the relevant institutions and judicial authorities. According to the obtained results it was established that:

- The Macedonian practice of detecting and prosecuting hate crimes lacks the basic approach towards their differentiation as a separate type of crime. Unfortunately, there is also no special monitoring or reporting, and no statistics on the number of these crimes. The police does not run any separate records, and the criminal charges do not even include a note on the existence of a motive for the hate, although in certain cases there are clear indications that the perpetrator of these crimes did act on such motives.

- The results of questionnaires aimed at obtaining public information received from the competent courts and offices of the primary public prosecution in the country show a tendency of avoiding, or giving a more lenient qualification of cases inciting hatred, discord or intolerance on a national, racial, religious and other discriminatory grounds (Art. 319 of the Criminal Code). For the period between 2011 to 2014, there was only one final judgment in the Republic of Macedonia for this type of crime.

- The Agency for Audio and Audiovisual Media Services is in charge of prohibiting program content that leads to incitement to national, racial or religious hatred and intolerance and imposing fines to legal entities and editors-in-chief for the offense which consists of broadcasting programs aimed at incitement of national, racial, gender and religious hatred. So far, despite the abundance of broadcasted content of this kind, the Agency has not imposed a single sanction. From the other measures (written warning, temporary ban etc.) that the Agency (formerly the Broadcasting Council) has at disposal, it has so far issued only two “informal warnings” (to TV Sitel and MRT) and a ban on broadcasting advertisements for a period of two days (to Kanal 5 for hate speech in the “Milenko Nedelkovski show”).

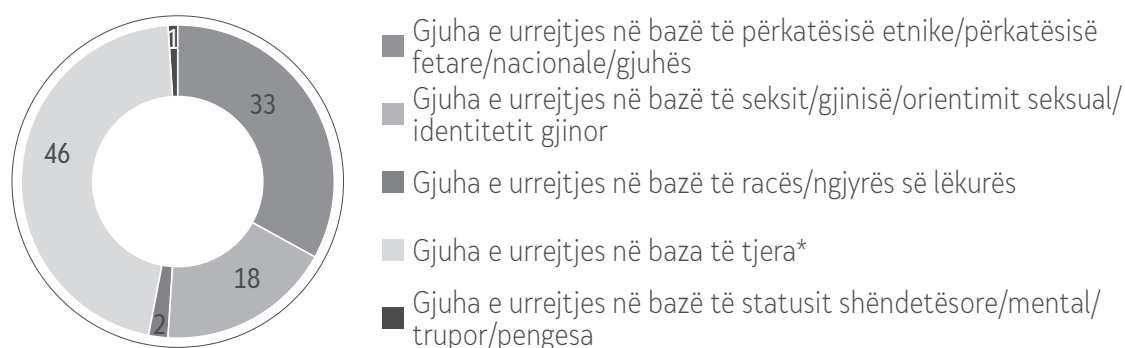
Platform:

The process of documenting/recording hate speech on the interactive web platform (www.govornaomraza.mk) officially started in April 2014 and went on until the end of July 2015, whereby a total of 237 applications were submitted, 103 of which were confirmed, and 90 reports were verified. The discrepancy of 13 confirmed report is due to the reports which stated that there were grounds for hate speech, but due to lack of verifiable information they were recorded in a separate category which did not enter the final outcome of the displayed statistics. Most of the reports on the platform were submitted by 20 volunteers deployed to cover cities in the 8 non-administrative regions¹.

The statistic data from the categories represented on the platform, in accordance with the Criminal Code of the Republic of Macedonia, shows that:

- Most of the reports referred to the category listed as hate speech on grounds of ethnicity/religion/language/nationality.
- The second category according to the number of reports was hate speech on grounds of sex/gender/sexual orientation and gender identity.
- There was a lower number of reports on other grounds. (see graph 1)

Graph 1: grounds, reports and percentages



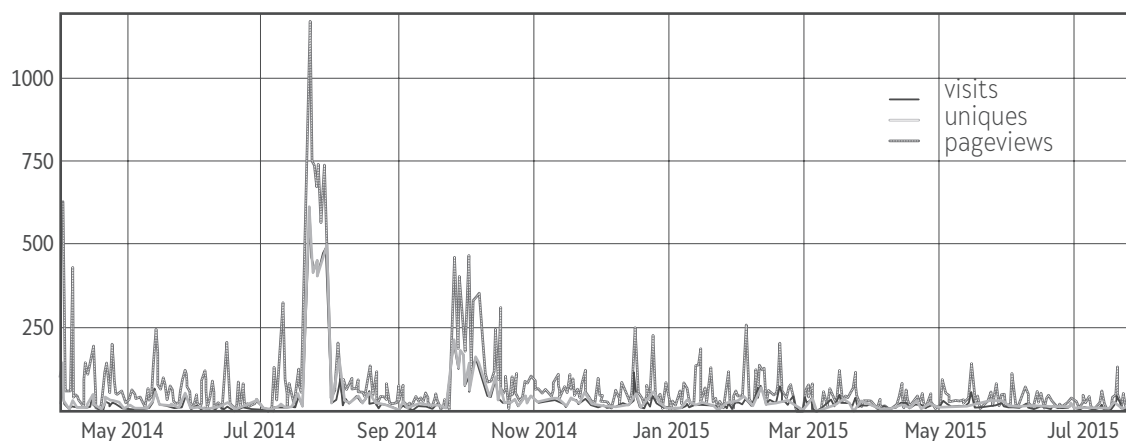
* Other grounds for hate speech are considered to be: political affiliation/social origin, family/marital status, property/social standing and ridicule of representatives of foreign countries. Although according to international

¹ The non-administrative regions cover the territorial division of the Republic of Macedonia into the: Polog, Pelagonija, Skopje, Northeast, Southwest, East, Southeast and Vardar region

standards these grounds are not a protected, unchangeable category, the authors of the analysis, taking into consideration the social circumstances in the country, believed it would be useful to take into consideration and analyze the cases reported on these grounds

- Most of the reports were filed on several grounds and often the reports on a published text, comment or other content on social networks and media contained hate speech on several grounds. In fact, a large part of the reports were on two grounds simultaneously - both, on grounds of sexual orientation and ethnicity.
- The graph, which according to the report measures the parameters for escalation of hate speech, confirms that this phenomenon is closely related to the political programs based on nationalist discourses which influence the electorate. As examples, and according to the monthly reports of the Committee, hate speech escalated the most during of the regular general and presidential elections. Next, during the post-election period or after the verdict for the defendants in the case “Lake Smilkovo”.
- Furthermore, the active campaign to increase homophobia by promoting etc. traditional values by the executive authority has undoubtedly resulted in an increase in the number of reports on the platform about hate speech on grounds of sexual orientation and gender identity. This campaign, apart from hate speech, also resulted in another attack of the LGBT community during a public event. (see figure 2)²

Figure 2: Increase in hate speech in certain time intervals displayed per month.



- Hate speech is often related to the social demands of various formal and informal groups which strongly disagree with the public policies and rule of the executive authority. In fact, the executive authority, often through the pro-government media, labels the individuals or groups that are part of civil movements, formal and informal initiatives of social networks and media. The number of graffiti containing hate speech is also associated with the current socio-political developments.

² Bi-monthly report on the situation of human rights by MHC http://www.mhc.org.mk/system/uploads/redactor_assets/documents/861/Dvomesecen_iz-vestaj_noemvri_dekemvri_2014.pdf crp. 4.

9. Conclusions and recommendations

Conclusions:

1. The legal framework for recognition and sanctioning of hate speech is imprecise and does not provide a clear framework for the definition and scope of hate speech, which in turn does not provide conditions for development of the jurisprudence.
2. The independent mechanisms for protection against hate speech in the media do not recognize hate speech and do not sanction the perpetrators.
3. The hate speech disseminated or incited electronically has noted high increase in the past two years, while the level of sanctioning of the perpetrators under the jurisdiction of the Ministry of Interior (Department of Electronic Crime) is virtually non-existent.
4. The independent and external mechanisms for protection against hate speech in the media do not pay due attention to the ethical and professional standards in journalism, although the media are often generators of negative trends in hate speech.
5. The Ministry of Interior does not dispose with statistical data on hate speech.
6. In cases of hate speech, the Public Prosecution does not act ex officio, and also does not show any interest for adequate and timely action upon submission of criminal charges.
7. The Ministry of Education and Science does not provide raising awareness programs among the youth about hate speech as a social phenomenon.
8. There is insufficient level of training when it comes to recognizing and sanctioning hate speech on the part of police officers, judges, public prosecutors and lawyers, as well as

lack of trainings provided by the relevant authorities.

9. The Criminal Code does not stipulate alternative measures or sanctions for the perpetrators of hate crime.
10. There is lack of public campaigns for recognition and prevention of hate speech in the public sphere, leading to low awareness about the phenomenon among the citizens.

Recommendations

1. The Republic of Macedonia has a weak formal frame for recognition and sanctioning of hate speech. The jurisprudence and principle of impunity point to the need for codification and clearer definition of Articles in the Criminal Code, which cover this crime. In addition, bearing in mind that sexual orientation has not been specified as grounds, while according to the statistical data it constitutes the second in line grounds of hate speech in the country, and as such should be explicitly stated.
2. The independent mechanisms for protection of hate speech in the media, such as the Agency for Audio and Audiovisual Media Services to apply their competences without bias, and at the same time take a pro-active role in condemning hate speech in the public discourse.
3. The Ministry of Interior and the Electronic Crime Department to take a proactive role in eradicating hate speech disseminated or incited electronically. At the same time, they should improve the cooperation with the local authorities and remind them about their duty to remove hate speech from public spaces.
4. The Ministry of Interior to start running statistics and data on the grounds of hate speech and hate crimes in accordance with the recommendations of the OSCE Mission, which in the past 3 years have submitted this request

in the reports on the progress of democracy and human rights in the Republic of Macedonia, as a full-fledged member of this organization.

5. The Public Prosecution to increase their interest to act ex officio and upon submission of criminal charges for hate speech, according to their competences.

6. Drafting and implementation of programs against hate speech in secondary and primary schools in the Republic of Macedonia and increased focus on youth in cooperation with the Ministry of Education and Science and with the NGOs working on this issue.

7. Conducting training for police officers, judges, prosecutors and lawyers in order to raise the awareness, recognition and understanding of the phenomenon of hate speech, including the jurisprudence of the European Court of Human Rights in this area.

8. The penalty provisions in the Criminal Code should offer alternative punitive measures

for the perpetrators. Practical examples of voluntary work in NGOs for the perpetrators in accordance with the grounds of hatred against an individual or group give better results in the process of reintegration and rehabilitation of offenders as opposed to an imprisonment sentence or a fine.

9. Greater involvement of the executive in the promotion of values such as equality and tolerance for diversity, as well as educational materials for the public to be able to identify hate speech.

10. The media and journalists must have rigorous mechanisms for verification and rejection of hate speech in the information they disseminate, while the media and journalists who encourage or spread hate speech must be adequately sanctioned under the Criminal Code. The Associations of citizens, the Council of Ethics of the media and journalists' unions to take the leading role in establishing high ethical and moral standards in writing and informing the public.